

## **REMARKS**

Claims 1-6, 8, 10-14, 16-22, 24-34, 36-51, 53-55, and 57-68 were rejected in an Office Action dated August 18, 2008. Claims 1, 5, 6, 24-26, 36-39, 41, 53, 61-63, and 66, have been amended, and claims 20-22, 27, 42, 48-51, and 60 have been cancelled without prejudice or disclaimer to the subject matter contained therein. Support for the amendments may be found in the "Detailed Description of the Invention." Applicants respectfully request entry of the amendments and reconsideration of the present application in view of the amendments and the following remarks.

### **Rejection under 35 USC §103 – Unpatentable over Maples in view of Hayes**

Claims 1-6, 8, 10-14, 16, 17, 20-22, 24-34, 36-51, 53-55, and 57-68 are rejected under 35 USC §103(a) as being unpatentable over Maples (US 6,395,383, hereinafter '383) in view of Hayes (US 6,368,710, hereinafter '710). It was stated in the Office Action at page 4, that at the time of the invention it would have been obvious at the time of the invention to a person having ordinary skill in the art to coat '383 with the film of '710 with the motivation of providing the article of '383 with various forms of protection. Applicants state that the amendments to the claims render moot this rejection.

Without acquiescing to the position of the Examiner, and solely to expedite prosecution of the instant application, the independent claims have been amended to recite, among other things, that the chemical protective covering comprises a laminate that is a composite of the sulfonated aromatic polymer and at least one ePTFE layer (claim 1); fabric laminate consisting essentially of a layer of apparel fabric laminated to the sulfonated aromatic polymer (claim 24); a layer of apparel fabric laminated to a composite consisting essentially of the sulfonated aromatic polymer between two ePTFE membranes (claim 41); a method comprising providing the sulfonated aromatic polymer between two porous or microporous substrates to reside at least partially in the pores of the substrates, and laminating at least one layer of apparel fabric to at least one of the substrates (claim 53), and a laminate that is a composite of the sulfonated aromatic polymer and a layer of apparel fabric or a porous or microporous substrate (claim 66), wherein

in each claim the sulfonated aromatic polymer has a sulfonic acid equivalent weight of about 400-800, and that the laminate has a permeation to bis-2-chloroethyl sulfide of less than or equal to about 100 ug/cm<sup>2</sup> (or  $\leq 30$ ug/cm<sup>2</sup> pinacolyl methylphosphonofluoridate, for claim 66) over a 20-hour period. Applicants assert the newly amended claims neither read on, nor are suggested by, the proposed combination of the materials of '383 as modified by the materials of '710.

Applicants respectfully assert that neither of the references alone or in combination suggest a chemical protective covering comprising a laminate having the claimed permeation resistance wherein the laminate is a composite of just 1) the claimed sulfonated aromatic polymer and 2) an ePTFE layer laminated to the claimed sulfonated aromatic, as claimed in claim 1. Where the materials as claimed would preclude the specific combination of the materials of '383, coated with the materials of '710, claim 1 is patentably distinct. Removal of the rejection is, therefore, requested.

Similarly, neither reference alone or in combination suggests a chemical protective article of apparel or enclosure for use in reducing exposure to chemicals, comprising a fabric laminate consisting essentially of a layer of apparel fabric laminated to the claimed sulfonated aromatic polymer, wherein the fabric laminate of these layers alone achieves the claimed permeation resistance as claimed in claim 24.

Still further, neither reference alone or in combination suggests a chemical protective article of apparel or enclosure comprising at least one layer of apparel fabric laminated to a composite consisting essentially of a sulfonated aromatic polymer between two expanded microporous PTFE membranes, wherein the fabric laminate has the claimed permeation resistance, as claimed in claim 41.

Moreover, neither reference alone or in combination suggests a method of reducing chemical exposure of a person, comprising the steps of interposing between a person and a noxious chemical, a chemical protective covering comprising a fabric laminate made by providing the claimed sulfonated aromatic polymer between two porous or microporous substrates to reside in at least a portion of the pores, and laminating at least one layer of apparel fabric to one of the porous or

microporous substrates, to provide a fabric laminate having the claimed permeation resistance, as claimed in claim 53.

Still further, neither reference alone or in combination suggests a laminate having the claimed chemical permeation resistance, wherein the laminate is a composite of just 1) the claimed sulfonated aromatic polymer, and 2) a layer of apparel fabric or a porous or microporous substrate.

The combination of references provided by the Office requires the materials of '383 to achieve the claimed permeation resistance, and these materials are not a feature of the instantly claimed laminates, and are not required to achieve the claimed properties. Thus, removal of the rejection is requested.

Moreover, the claims have been rejected as obvious over the combination of references though neither teaches the claimed feature of having the claimed chemical permeation resistance, citing *In re Fitzgerald*. For the reasons set forth in Applicants' response of May 18, 2008, and which are incorporated herein by reference, reliance on *In re Fitzgerald* is inappropriate where the pending claims are not product by process claims (see pages 16 and 17), and the burden remains on the Office to establish inherency of these features.

Applicants assert that the allegedly inherent characteristics must necessarily flow from the teachings of the applied prior art. As stated in Applicants' prior response, it is clearly established in *In re Rijckaert* that the fact that a certain result or characteristic may occur, or be present in the prior art, or that it may result due to optimization of conditions, is not sufficient to establish the inherency of that result or characteristic. Thus, the lack of suggestion of the claimed features in the instant combination of references precludes the application of inherency principles. Removal of the rejection is therefore requested.

**Rejection under 35 USC §103 – Unpatentable over Maples in view of Hayes and further in view of Kershner et al.**

Claims 18 and 19 are rejected under 35 USC §103(a) as being unpatentable over '383 in view of '710 as applied to claim 1 above, and further in view of Kershner et al. (US 4,824,916, hereinafter '916). For the reasons set forth above for independent claim 1, Applicants deem

claims 18 and 19 patentable since they are dependent on claim 1.  
Removal of the rejection is respectfully requested.

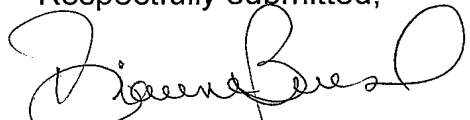
**Double Patenting**

Claims 1-6, 8, 10-14, 16-22, 24-34, 36-51, 53-55, and 57-68 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 18-47, and 49-51 of copending Application No. 10/818,214. Applicants respectfully assert that upon successful prosecution of the pending claims, Applicants will consider filing a terminal disclaimer to overcome the double patenting rejection.

**Conclusion**

For the foregoing reasons, the present invention as defined by the claims is neither taught nor suggested by any of the references of record. Accordingly, Applicants respectfully submit that these claims are now in form for allowance. If further questions remain, Applicants request that the Examiner telephone Applicants' undersigned representative before issuing a further Office Action.

Respectfully submitted,



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